

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SATURNINO PRADO,

Plaintiff,

vs.

UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT
OF CALIFORNIA,

Defendant.

No. C 10-0982 JSW (PR)

**ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE AND
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

(Docket no. 2)

INTRODUCTION

Petitioner, currently incarcerated by the State of California at California State Prison Sacramento, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Petitioner seeks leave to proceed in forma pauperis (docket no. 2). This order dismisses the petition. Plaintiff's application to proceed *in forma pauperis* GRANTED in a separate order filed simultaneously.

DISCUSSION

Plaintiff's amended complaint challenges Plaintiff's conviction in front of Los Angeles County Superior Court Judge Alice Altoon. Plaintiff asserts in his complaint for relief that he was not guilty of the crime, but was convicted and is serving a 14 year sentence. Plaintiff has previously filed multiple similar civil rights actions in this Court, which have been dismissed by this Court for the same reasons set forth herein, as well as multiple habeas petitions, which were transferred to the proper venue.

1 A. Standard of Review

2 Federal courts must engage in a preliminary screening of cases in which prisoners
3 seek redress from a governmental entity or officer or employee of a governmental entity.
4 *See* 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims,
5 and dismiss any claims which are frivolous, malicious, fail to state a claim upon which
6 relief may be granted, or seek monetary relief from a defendant who is immune from
7 such relief. *See id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *See*
8 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
10 elements: (1) that a violation of a right secured by the Constitution or laws of the United
11 States was violated, and (2) that the alleged deprivation was committed by a person
12 acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

13 B. Legal Claim

14 In this case, Petitioner has improperly filed his claim as a civil rights action. A
15 district court may construe a habeas petition by a prisoner attacking the conditions of his
16 confinement as a civil rights action under 42 U.S.C. § 1983. *Wilwording v. Swenson*,
17 404 U.S. 249, 251 (1971). The opposite is not true, however: a civil rights complaint
18 seeking habeas relief should be dismissed without prejudice to bringing it as a petition
19 for writ of habeas corpus. *Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir.
20 1995).

21 Any claim by a prisoner attacking the validity or duration of his confinement must
22 be brought under the habeas sections of Title 28 of the United States Code. *Calderon v.*
23 *Ashmus*, 523 U.S. 740, 747 (1998); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). A
24 prisoner must bring a habeas petition if the nature of his claim is such that it would
25 necessarily imply the invalidity of his conviction or continuing confinement. *Bogovich*
26 *v. Sandoval*, 189 F.3d 999, 1002 (9th Cir. 1999) (ADA claim); *Butterfield v. Bail*, 120
27
28


1 F.3d 1023, 1024 (9th Cir. 1997) (§ 1983 claim). In this case, Plaintiff's claims attack the
2 validity of his confinement and are such that they necessarily imply the invalidity of his
3 continuing confinement. As such, the complaint fails to state a claim for relief and is
4 DISMISSED without prejudice.

5 **CONCLUSION**

6 Based on the foregoing, this action is DISMISSED. The Clerk of Court shall
7 close the file and enter judgment in accordance with this order.

8 IT IS SO ORDERED.

9 DATED: June 21, 2010

10 
11 JEFFREY S. WHITE
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SATURNINO PRADO,
5 Plaintiff,

Case Number: CV10-00982 JSW

CERTIFICATE OF SERVICE

6 v.

7 US DISTRICT COURT et al,
8 Defendant.
9 _____/

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on June 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Saturnino Prado
16 P.O. Box 290066
17 #P-98312
18 Represa, CA 95671

19 Dated: June 21, 2010



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk